

**BEST IMAGE AVAILABLE**

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**James S. Keller**  
*Chief Regulatory Counsel*

May 6, 2005

**BY E-MAIL**

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
[Regs.comments@federalreserve.gov](mailto:Regs.comments@federalreserve.gov)

Re: Regulations CC and J - Docket No. R-1226

Dear Ms. Johnson:

The PNC Financial Services Group, Inc. (“PNC”), Pittsburgh, Pennsylvania, appreciates the opportunity to submit comments to the Board of Governors of the Federal Reserve System (the “Board”) on its amendment to Regulation CC (including conforming cross-references in Regulation J) to define remotely created checks (“RCCs”) and adopt new transfer and presentment warranties that are applicable to RCCs (the “Proposal”) (70 Federal Register 10509 (March 5, 2005)).

PNC is one of the largest diversified financial organizations in the United States, with approximately \$83.4 billion in total assets as of March 31, 2005. Its major businesses include community banking, corporate banking, real estate finance, asset-based lending, wealth management, and global fund processing services. PNC’s lead bank, PNC Bank, National Association, Pittsburgh, Pennsylvania, has branches in Florida, Indiana, Kentucky, New Jersey, Ohio, and Pennsylvania.<sup>1</sup> PNC also has one other bank subsidiary, PNC Bank, Delaware, Wilmington, Delaware, which has branches in Delaware.

**GENERAL COMMENT**

Financial institutions, including this respondent, make use of RCCs. While no payment system is entirely fraud proof, it is PNC’s belief that payment systems such as ACH are generally more efficient, secure and cost effective. PNC is concerned about the

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<sup>1</sup> After consummation of PNC’s proposed acquisition of Riggs National Corporation, which is scheduled for May 13, 2005, PNC Bank, National Association, will also have branches in the District of Columbia, Maryland and Virginia.

potential for fraud if there is an increased use of RCCs by payees. PNC encourages the Board to find ways to promote the use of ACH debit transactions in lieu of RCCs.

Despite our concern regarding the increased usage of RCCs, PNC believes there needs to be nationwide uniformity on the warranties that are applicable to RCCs. We believe the Proposal will promote uniformity, in light of the fact that several states have enacted legislation that is similar or comparable to the demand draft legislation enacted by California, and only a small number of states have adopted the proposed changes to Articles 3 and 4 of the Uniform Commercial Code (“UCC”) as proposed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute in 2002. The Proposal will further promote uniformity with respect to those states that have not adopted any RCC or demand draft legislation. In those states, the paying bank is still liable to its customer for the payment of unauthorized RCCs.

PNC supports the Proposal’s provision shifting the liability for unauthorized RCCs from the paying bank to the depositary bank, since the depositary bank may, in its relationship with its customers, more readily regulate the conditions under which RCCs are deposited and thereby prevent, deter or remedy abuse of RCCs. PNC also supports applying the warranties between banks, since the paying bank and the depositary bank can rely on their respective customer agreements and the UCC to address any rights they may have against their respective customers. PNC further believes that the Proposal should apply to consumer as well as commercial transactions.

## SPECIFIC COMMENT

PNC is a member of The Electronic Check Clearing House Organization (“ECCHO”), and participated in the formulation of the ECCHO letter. With respect to the Board’s request for specific comments regarding the Proposal, PNC agrees with the comments provided by ECCHO. In conjunction with our support of the ECCHO letter, PNC would like to emphasize two points. We agree with the ECCHO request for clarification of the warranty coverage for payable through items (Section 2. D. Coverage of Payable-Through Checks Under Definition of RCC). We believe that the definition of a customer account needs to include brokerage clearing accounts. Many broker/dealers and mutual funds permit customers to draw on their brokerage or mutual fund accounts by writing checks. These checks are actually drawn on a clearing account that the broker or fund maintains at a bank. On a daily basis, the bank provides the brokerage company with a list of the outstanding consumer checks. The brokerage company notifies the bank which checks should be paid and transfers funds into the clearing account to cover all outstanding checks. It is possible that a consumer could authorize a payee to create an RCC that would be payable from such an account.

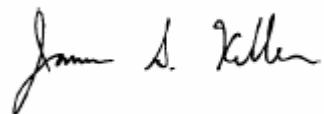
Jennifer J. Johnson  
May 6, 2005  
Page 3

Second, ECCHO proposes that UCC defenses should be available to depositary banks when faced with warranty claims (Section 4. C. Defenses of Transferring Bank to Warranty Claim). PNC supports the inclusion of such defenses as sound policy in terms of adapting existing loss allocation to this new context. PNC believes that it may be necessary for the Board to include a provision in the regulation that, for purposes of asserting such defenses, the RCC is deemed to contain an unauthorized signature, as opposed to containing no signature at all. This should facilitate the application of the UCC defenses until such time as the UCC can be amended to take into account RCCs in the context of the defenses to such claims.

## **CONCLUSION**

PNC expresses its appreciation for this opportunity to comment on the Proposal. We hope our comments will be helpful to the Board in formulating the final regulation. Please feel free to contact us if you have any questions about our comments.

Sincerely,



James S. Keller